

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL No.80 OF 2012

*(Appeal from the judgment and decree of the High Court Civil Suit No.43 of 2005 at
Kampala before Hon. Lady Justice Elizabeth Musoke)*

1) RUTAAMA GEOFFREY }
2) MISANGO ABEL }APPELLANTS

VERSUS

1) ATTORNEY GENERAL }
2) APAC DISTRICT }RESPONDENTS

CORAM:

Hon. Lady Justice Faith E. K. Mwendha JA

Hon. Mr. Justice Richard Buteera JA

Hon. Mr. Justice Geoffrey Kiryabwire JA

JUDGMENT OF THE COURT

The appellants were plaintiffs in High Court Civil Suit No.43 of 2005. The appellants' claim against the respondents was for special, general and

aggravated damages for property wrongfully taken/converted loss, of earnings, interest and costs of the suit.

They alleged that on the 30th day of June 2004, they got permission from the Government of Uganda through Dr. N. Kauta Commissioner Livestock Health and Entomology (annexure A) to keep 500 (five hundred) heads of cattle at Muruzi ranch in Akokolo Sub County Apac District.

On the 9th day of August 2004 at around 5:00pm the District Resident Commissioner with his escorts all of whom are Government servants in company of District Councilor of Akokolo Sub County Mr. Charles Ogang who was an employee/servant of Apac District Administration mobilized local people armed with knives, pangas and sticks. They attacked, slaughtered and took away about 300 (three hundred) heads of cattle and other 200 were left to wonder in the wilderness. The group took away all plaintiffs' household items as well as all the equipment which the plaintiffs used to look after their cattle.

The particulars of special damages were listed and marked A, and included all the 500 heads of cattle valued at 150,000,000/=, 10 bicycles valued at 1,500,000/=, 64 mattresses at 30,000/= each and other things. There were 29 household items listed together with the value of 500 heads of cattle, total of special damages claimed was shs.187,297,000/=.

It was alleged that the appellants' monthly income was about 2,160,000/= from selling milk sixty jericans every day. That, this was lost as a result of acts of the agents/employees/servants of the defendants of which the defendants were liable.

They pleaded among other things that as a result of the acts of the defendants' servants/ employees/ agents, they have suffered a terrible loss, great inconvenience and mental anguish.

They therefore prayed that judgment be entered in their favour for general, aggravated and special damages as indicated in paragraph 5(a) and (b) of the plaint. They also prayed for interest on special damages at Commercial rate from the date of filing the suit till payment in full. They further prayed for any further alternative relief this Court may give.

The 1st appellant filed a defence generally denying the claim. In paragraph 4 of the defence stated that the plaintiffs illegally occupied Maruzi ranch and did not obtain the necessary authority to occupy the same.

That they were given sufficient notice to vacate the ranch but resisted even after last warning was issued by the office of the Resident District Commissioner (annexure A). They alleged that the plaintiffs were subsequently arrested and charged with forcible entry into Maruzi Government ranch in the Chief Magistrate's Court, Apac but they subsequently jumped bail and warrants of arrest were issued and were attached as "B" and "C".

The 1st defendant denied knowledge of the acts complained of in paragraph 5(c) and (d) and contended that no such acts were committed and if at all they were committed servants of the defendant never at any one time participated/authorized/condoned the same where upon the first defendant is not vicariously liable at all. The 1st defendant denied

SR
BR
/

having mobilized armed local people and contends that the occupants of the ranch were peacefully evacuated with the help of the people.

He denied any loss having been caused by him and if the plaintiffs suffered he was not liable.

We noted that while summons were served on both defendants, the 2nd defendant never filed a defence as the 1st defendant was speaking for himself alone. We also noted that all the annexures attached on the written statement of defense originated from the employees, workers or agents of the 2nd respondent.

We also noted that the memorandum of the scheduling conference was signed by Counsel for the plaintiffs and counsel for the 1st defendant alone.

The case was heard and at the end of it the Court dismissed the suit with costs. The plaintiffs who were now appellants were dissatisfied with the decision and hence this appeal against the whole judgment.

They appealed on ⁸ grounds as follows:

- 1) The learned trial Judge erred in fact and law when she failed to evaluate properly all the evidence adduced by the plaintiff which caused injustice to the plaintiffs.
- 2) The learned trial Judge erred in law and fact when she failed to acknowledge the law ~~against the law~~ against destruction of property and the right to property ownership.



- 3) The learned trial Judge erred in law and fact when she dismissed the plaintiffs' case with costs without properly evaluating the evidence on record.
- 4) The learned trial Judge erred in fact and law when she failed to evaluate properly the process of animal disease control when a disease is reported.
- 5) The learned trial Judge erred in fact and law when she failed to evaluate properly the expert evidence given by the Commissioner for livestock and entomology relating to the animal disease control.
- 6) The learned trial judge erred in law and fact when she failed to acknowledge that there was no way animals could move without a permit.
- 7) The learned trial judge erred in law and fact when she failed to reach a proper conclusion of law in relation to exemplary damages.
- 8) The learned trial judge erred in fact and law when she failed to reach a proper conclusion of law in relation to general damages.

REPRESENTATION

Mr. Bagologoza David was counsel for both appellants.

M^{rs}. Nabakooza Margaret Principal State Attorney represented the 1st respondent and 2nd respondent had a representative; the Assistant Chief Administrative Officer Apac District. *was present*

Counsel Bagologoza in his submissions referred Court to the written arguments on page 13 of the amended conferencing notes of the appellants of 1st March 2013.

He went on to highlight the 13 points in the written arguments. He argued that the trial Judge ignored the vital evidence of Mr. Luutu the camera man who visited the Maruzi Ranch four days after the incident. She did not attach value to it. Mr. Luutu had testified that he travelled from Kampala to the scene toured some parts where the destruction had taken place and even took pictures which were presented during his testimony.

He further submitted that the learned trial Judge ignored the implications of what transpired when the appellants were arrested. He said the local authorities took two simultaneous decisions i.e. arrest for forceful entry and carried out eviction before the matter was adjudicated upon in the Criminal Proceedings as first defendant alleged.

By so doing it was submitted that the appellants were prejudiced as they were evicted without being heard. The Criminal Proceedings were terminated in favour of the appellants. The defendants' evidence was that when the appellants were arrested they found it difficult to issue a movement permit as the cows were scattered. The trial Judge failed to evaluate this evidence and she reached a wrong conclusion.

He submitted that the trial Judge misdirected herself when she accepted the evidence of the defendants that when a photograph is taken from Maruzi the hills have to be seen. That since the photographs didn't include hills it must have been taken from elsewhere. He concluded that this was erroneous.

That it was a misdirection of the trial Judge not to believe that the appellants could have such properties as they lived a nomadic life.

SS
BR

16

Counsel further submitted that it was a misdirection of the trial Judge when she failed to evaluate correctly the expert evidence promised by the Commissioner of Diseases and Entomology Dr, Kauta. He testified that as soon as he was told that there was a disease outbreak, he simply ordered quarantine as it is the routine pending mitigating and they could not take chances to take it that the report was false based on lies.

He went further and submitted that while the trial Judge ruled that the cows were transported back to Masindi, she failed to note that there was no accountability as to who the cows were handed to since the appellants had been arrested.

There was no movement permit which would have accrued for the movement of the animals and how many were moved and in whose names the cows were being moved. He submitted also that from the time the appellants were arrested, whoever took charge of the animals would be liable and duty bound to plaintiffs' requiring him or her to account for them.

The respondents claim that they handed over the cows at the ferry when they crossed over to Masindi they didn't say who they handed over the animals, on whose behalf and in whose names. He said the respondents put themselves in a position where they took charge of the appellants' animals and never handed back the animals to them, thus depriving them of their property (animals) and that there was a violation of their fundamental right to own property.

That the illegal act, of an alleged movement of animals without a movement permit should not be allowed to pass with impunity among others.

BD



He finally submitted that the appellants pleaded specific damages for their animals and their specific items. They pleaded for exemplary damages and general damages. There was evidence establishing grounds for specific damages and special damages were specifically pleaded.

That though some of the items claimed were not sufficiently quantified, the law is available to award unquantified claims.

He prayed that this Court re-evaluates the evidence on record and accept the plaintiffs' case the moment they were arrested under a hostile environment and enter judgment in favour of the appellants and set aside the judgment and decision of the Lower Court.

Ms. Nabakooza Harriet for the respondents adopted the same approach of submissions. She relied on the respondents' notes filed in Court on 24th January 2013. She followed the issues as framed that arose from the memorandum of appeal.

She said that the brief facts as agreed during scheduling conferencing according to the judgment were as follows:

The plaintiffs were at the material time, June-August 2004 occupying part of Maruzi Ranch in Akokoro Sub County Apac District. The plaintiffs were at one time or another during the above period ordered by the Apac District Administration Officials to vacate the said Ranch.

On the first ground it was submitted that the respondents contended that the trial Judge properly evaluated the evidence vis-à-vis the defendants' evidence and rightly dismissed the plaintiffs' case. That the burden was on

BR JS



the appellants to prove the circumstances, under which, the alleged injustice was caused to the plaintiffs (appellants).

On the second ground, she submitted among other things that the learned trial judge evaluated the evidence properly especially on the fact that she found that the appellants were mere nomads looking for pastures, temporarily staying on the ranch. That they could not own such vast amounts of properties. The photographs only captured two burnt huts and one dead cow. She submitted that there was no credible evidence adduced to prove that any of the alleged properties of the plaintiffs or cows were taken or destroyed by the defendants or any other person. She retained their submissions at the High Court that the pastoralists with the appellants' cattle were ferried to Masindi and the exercise was supervised by the police and local leaders. That by the time the appellants were arrested the cows were grazing and the appellants' workers remained in charge of the animals, at all material times.

On ground three and four, counsel retaliated the Lower Court's submission to the effect that the trial Judge rightly pointed out the disease information which the Commissioner relied on was not verified as the District Veterinary Officer of Apac stated that there was no animal disease outbreak. That it is only when the disease is confirmed in the area that their District Veterinary Officer notifies the Commissioner Livestock Health and Entomology seeking authority to impose quarantine on the livestock.

She went further and submitted that the trial judge rightly held that the weight of evidence on record mainly from the authorities in charge of the area, DW1, DW2 and DW3, and the District Veterinary Officer DW4 did not support the claim that there was an outbreak of foot and mouth disease.

BR

JS



That the Commissioner did not carry out the process in accordance with the Animal Disease Act Cap 38 which prescribes the process to be followed by relevant officials in case of disease outbreak. She declared the disease to have been imaginary.

On ground five and six, she submitted that the circumstances under which the plaintiffs and their workers were evicted from Maruzi Ranch did not require issuance of a movement permit. The appellants had been issued with series of warnings which they failed to heed until they were arrested. That the major fact, that the trial Judge acknowledged which was relevant to the issues framed was that the evidence on record indicated that the defendants met the cost of ferrying the pastoralists and their cattle which included the appellants' cattle.

On ground seven, she submitted that the learned trial Judge correctly denied the claim for exemplary damages because the actions of the respondents were not oppressive, arbitrary or unconstitutional but were lawful. Nothing in the evidence brought out those ingredients above stated.

On the issue of general damages, she submitted that the learned trial Judge was right to decline awards then, and that she agreed with the reasons. The trial Judge held that, the appellants had not proved that they suffered any loss and their evidence was marked with inconsistencies and lies so it had no merit.

She rightly found that she could not see that the appellants suffered any inconveniences and that there was no sufficient evidence adduced by the appellants. She prayed that this Court finds that there is no merit in the appeal and dismiss it with costs.

BR 48

Mr. Bagologoza in his short reply invited Court to consider and evaluate the evidence on record, the testimony of Dr. Kauta who came and testified in Court and the evidence of Mr. Luutu the camera man.

At this point the Court interjected and pointed out that the letter of Dr. Kauta of quarantining the cattle was not on record including the movement permit and other exhibits. Counsel Bagorogoza made an application to file a supplementary record of appeal for purposes of including the exhibits. The application was allowed and he was directed to file the same in scheduled time. Another order to Registrar of Court was issued to produce the original file for the Coram to satisfy itself on what exactly transpired. This was to facilitate the Court to write a judgment.

The supplementary record of appeal was filed as directed by the appellants' counsel. The original file was also brought to the Court Registry. Counsel for the respondent objected that counsel Bagorogoza had included matters that were not on Court record i.e. the proceedings of the Criminal Case which was eventually dismissed. We took note of it and it was not taken into consideration when writing this judgment.

CONSIDERATION OF THE APPEAL

This is the first appellate Court and under rule 30(i) of the Court of Appeal Rules, we are empowered to re-appraise the evidence on record and draw our own inferences of fact. See: ***Bogere Moses vs. Uganda, SCCR Appeal No.1 of 1997 Unreported, Kifamunte vs. Uganda, Criminal Appeal No. 10 of 1997*** "the first appellate Court has a duty to review the evidence and reconsider the materials before the trial Judge. The appellate Court must then make up its own mind not

JS
BR

disregarding the judgment appealed against but carefully weighing and considering it"

Both counsel adopted the arguments of scheduling conferencing memorandum and substantiated on them orally as per the transcribed proceedings of the Court. As for Counsel for the respondent in addition to the adoption of the written arguments she relied greatly on the submissions made at the Lower Court.

There were two agreed upon facts as stated in the learned Judge judgment

- 1) That the plaintiffs were at the material time; June to August 2004 occupying part of Maruzi Ranch in Akokoro Sub County, Apac District.***
- 2) That the plaintiffs were at one time or another during the above period ordered by the RDC's office and the Apac District Administration officials to vacate the said Ranch.***

The issues which arose out of the facts and as agreed were as follows:

- 1) Whether the occupancy of the plaintiffs in Maruzi was legal.***
- 2) Whether the order of vacation was proper under the governing laws.***
- 3) Whether the defendants carried out the evacuation of Maruzi Ranch.***
- 4) Whether the plaintiffs lost their animals and household items and equipment as pleaded.***
- 5) Whether the defendants are liable for the loss.***
- 6) Remedies available to the parties.***

All the six issues as framed were answered in favour of the respondents.

We had the opportunity to peruse the lower Court record; we carefully read the Lower Court judgment as well. We also listened carefully to both learned counsel submissions.

The first ground was that the learned Judge failed to evaluate properly all the evidence adduced by the plaintiffs (appellants) which caused injustice to them.

It is true from the evidence that the appellants had a movement permit dated 24th June 2004 in the names of the second appellant to move their 500 heads of cattle from Masindi to Apac District.

Annexure "A" on the other hand was a letter dated 2nd August 2004 to the District Veterinary Officer from Dr. Kauta the Commissioner Livestock Health and Entomology. It was in reference to the livestock farmer Misango Abel who was keeping the 500 heads of cattle on Maruzi Ranch who was being forced to leave the ranch. He referred to the information of disease outbreak in the area. He ordered among others to quarantine the cattle there to avoid violation of the Animal Disease Act.

PW1 stated that they got permission ^{from} ~~for~~ the LC3 chairperson though it was verbal and that even the RDC was aware.

It is clear to us that as far as the legality of the occupation of the appellants and their cattle on the Ranch was concerned, there was no documentary evidence. The movement permit which was ExhP1 was only permitting them to move the 500 cattle within 11 days from Masindi Port to Apac which was dated 24th June 2004.

BR

K.

It is also clear from the evidence that the appellants were arrested and charged for the offence of forceful entry contrary to section 77 of the Penal Code Act.

It was on the 18th August 2004 that the respondents and or their employees/agents arrested them despite the letter of 2nd August 2004 advising them not to send them away. Their cattle were left unattended to much as the respondents stated that they were ferried back to Masindi. There was hardly any proof that the cattle were ferried back to Masindi and they were handed over to the appellants.

We accept the submissions of the appellants' counsel to the effect that the learned Judge ignored the implications of what transpired when the appellants were arrested. It is true that the appellants did not legally occupy part of the ranch but we hasten to add that this could not justify the high handedness in which they handled them and their property including their cattle. It is not disputed that the appellants were charged with forceful entry contrary to section 77 of the Penal Code, and this would have been the main reason not to harass them the way they did. They would have left the law to take its course instead of them taking the law in their hands.

We find that the learned trial Judge erred in fact and law when she failed to evaluate properly all the evidence adduced by the appellants which caused injustice. By doing so she left the appellants to suffer at the hands of the respondents as they were condemned unheard. There was evidence by Dr. Kauta Nicholas that the first appellant, Misango Abel, complained to the Minister. The Minister referred the complainant (Misango Abel) to him. That PW6 Dr. Kauta wrote on 2nd August 2004 to the District Veterinary Officer Apac about the disease. It is not in dispute that before he wrote he didn't

verify about the disease outbreak. It was however his testimony that when there is an emergency, information is taken from anyone and they ask the District Veterinary Officer in-charge to attend to the matter including verification. He said the letter was meant for the District Veterinary Officer to act according to the procedures. He further said that the intention of the letter was to prevent the disease from spreading beyond the Ranch. He expected the District Veterinary Officer to go to the site.

The defence on the other hand was of the view that Dr, Kauta's interest was to help the appellants. From the record there is no indication at all that Dr. Kauta was perpetuating the appellants' interest. There was nothing to suggest that for instance there was no such complaint made to the Minister by the appellants, which formed the basis for Dr. Kauta's letter and action.

On further analysis of the evidence, DW1 the Chairman LC III testified that he received information from the chairman LC II Kungu that unknown groups which came with large herds of cattle were spoiling their crops and the majority were in two villages that is Teal whereby 30 gardens of crops were destroyed. The report was made on 25th June 2004.

He testified further that he replied to that report on 26th June 2004 and asked the Chairman Kungu to inform these groups to go to his office on 28th June 2004 but they did not turn up. From there the Resident District Commissioner's office and the District Police Commander got involved they held an inter District meeting (Apac and Masindi). Out of the blue the witness said this was the 3rd forcible entry in the District.

It is clear to us that it is the destruction of crops which sparked off the respondents' actions but not forcible entry. The appellants were Ugandans

who ought to have been treated in a human manner. DW1 confirmed that he instructed the chairman LC II Kungu to mobilize the community and the pastoralists for a meeting and he later testified that he talked to the community so that they leave the pastoralists to leave in peace. By instructing the chairman LC II to mobilize the community, the respondents could not deny the appellants' claim that the people were mobilized against them.

The letter Dr. Kauta wrote to the District Veterinary officer ought to have been taken seriously as it was drawing their attention on the law and the consequence of not observing the law i.e. the Animal Disease Act.

We observed that counsel for the respondents in their submissions at the Lower Court which she relied on, the procedure was elaborated to be taken on in case of an outbreak of animal foot and mouth disease. This was testified to by DW1, DW2 and DW4. We find that this elaboration was not material because it was an outright assault on the rule of law. The District Veterinary Officer was the recipient of Dr. Kauta's letter. Instead of adhering to the advice his superior rendered in the letter, he and his colleagues just ignored it. Two wrongs cannot make a right. As law abiding officers they ought to have followed the Criminal Proceedings to their logical conclusions after verification report to Dr. Kauta. They violated the principle that one cannot be a judge in his own case.

In short they were challenging Dr. Kauta's letter but the provision they relied on doesn't in anyway prohibit Dr. Kauta at supervisory level to quarantine animals. They relied on S.2(c) of the Animal Disease Act Cap 38 which provides "**any person having in his or her possession or change any animal affected with disease shall as soon as possible notify an**

administrative officer or veterinary officer or inspecting officer, whoever is the nearest of the fact of the animal being affected or suspected of being affected”.

They also relied on S.3 of the Act which provides as follows: **“Any veterinary officer who is notified of any animal being affected or suspected of being affected by disease shall give such directions and take such steps as may be necessary for the purpose of ascertaining the existence and nature of the disease and he or she shall on being satisfied that the disease exists forthwith report to the Commissioner of Livestock and Entomology”.**

From the above provision there is nowhere in the provision prohibiting imposing quarantine as an interim measure. Moreover the provision only provides for making a report to the Commissioner Livestock and Entomology and it doesn't state that it is only after that report that quarantine is imposed. Dr. Kauta's testimony was spot on in this issue.

We are unable to accept that submission also, so the first ground succeeds.

On the second ground which is to the effect that the learned trial Judge erred in law and fact when she failed to acknowledge the law against destruction of property and the right to own property. It is on record that the respondents alleged to have ferried the heads of cattle back to Masindi.

It was clear from the record that the appellants were grazing these cattle there and when the rains came they would go to Soroti. This was after the respondents had already arrested the appellants. There was undisputed evidence undisputed that the appellants had 500 heads of cattle. The trial judge in her judgment doubted if the appellants can own such property and

she went on to say that maybe it belonged to their families. Her basis of saying so was that because they were nomads. Nomads are entitled to own property as Ugandans as Article 26 (i) and 2 of the Constitution.

The respondents' testimonies were not useful in this particular regard since there was evidence that the appellants moved to Apac, Akokoro Sub County in the Government Ranch with 500 heads of cattle. The respondents didn't say to whom they handed the cattle and on whose behalf by name. Indeed from the evidence of DW5 Adoko Godfrey who was the ferry operator involved in shipping the cattle from Apac back to Masindi, he testified that he did not know to whom the cattle were handed over to.

We accept the appellants' counsel submission which was direct consequence of their evidence that the respondents put themselves in a position where they took charge of the appellants' animals and failed and/or never handed them over to them. In taking over the appellants' cattle, the respondents put themselves in a position of a Baillie and therefore had a legal obligation to return the cattle taken to the appellants in the same numbers and condition as when they were taken.

They actually deprived the appellants of their animals thus violating their right to ownership of property. The respondents violated Article 26 (1) and (2) of the Constitution. This ground succeeds also.

Grounds 3, 4 and 5 are part and parcel of ground one so we find no need of repeating them on what we stated on ground one above.

Ground 6 is part and parcel of ground 2 so we equally find no need of repeating what we said on ground two above.

js
BR ki

We will discuss ground 7 and 8 together as they are all on damages.

Generally, damages serve the purpose of restoring the person wronged to the position he/she was in before the wrong was done against him or her. And general damages according to **Lord Macnaghten**, in the case of **Stroms vs. Hutchinson (1905) AC 515**, were said to be such as the law will presume to be the direct natural or probable consequence of the act complained of.

General damages are compensatory in nature and should offer some satisfaction to the injured plaintiff. See: **Uganda Revenue Authority versus Wanume David Kitamirike Court of Appeal No.43 of 2010**.

Counsel for the appellants adopted their submissions at the Court to justify the award of general damages to their clients. At the trial Court, counsel for the appellants prayed for compensation for the loss of 500 heads of cattle which were lost in 2004 and which on average would have produced 1 cow every year. In this regard, counsel for the appellants submitted that shs.2, 500,000,000/= (shillings two and half billion) would be reasonable.

The trial judge found that the appellants (then plaintiff) had not proved that they had suffered loss and that their evidence was marred by inconsistencies and had no merit. She pointed out that the present appellants had not suffered inconvenience as they were required to leave the ranch but adamantly remained even after the issuance of the press release. In her findings, she stated that on the contrary it was the respondents (as defendants) who suffered inconveniences as they had to meet the cost of ferrying the appellants' cattle.

Handwritten initials and signatures in blue ink, including "RR" and "JS".

Counsel for the respondents agreed with this finding of the trial judge. We have already found that the ^{actions} evidence of the ^{respondents} appellants ^{were} was high handed. We have also found that the appellants lost other personal property due to the eviction. The respondents allegedly ferried the appellants' cattle back to Masindi but there is no record as to whom the cattle was handed over to. These are all wrongs that warrant pecuniary compensation for inconvenienced and mistreatment. We find that an award of shs.2, 500,000,000/= as prayed for by counsel for the appellants as excessive and accordingly award the sum of 50, 000,000/= as appropriate.

The appellants also prayed for special damages and aggravated damages.

As to special damages these are damages that reflect the actual loss that the claimant has incurred and such claims have to be specifically pleaded and strictly proved. The claim for special damages as pleaded in the plaint was for:

- a) Shs.187, 297,000/= inclusive of a claim for the 500 heads of cattle of shs.150, 000, 000/= [or shs.300, 000/= per head of cattle] and the rest being personal belongings.
- b) Monthly income from the sale of milk at shs.2, 160, 000/= from the 19th August 2004 until the matter is "settled"

Counsel for the appellant at the trial Court did not lead much evidence under the head of special damages and tended to merge it with the award of general damages in his submissions as well.

The trial judge found that there was no proof for all the items totaling shs.187, 297, 000/=. She found the claim to be "merely speculative and outrageous..." [~~page 186 of the record~~]. She accordingly rejected this claim

BR
Ni.

for special damages. Counsel for the respondent in conferencing notes agreed with the trial judge that the appellants at the High Court did not discharge the required burden to prove special damages.

Indeed special damages need to be specifically pleaded and strictly proved though this need not always be by documentary evidence [per **Masika** (C) as he then was) in **Kyambadde vs. Mpigi District Administration**-followed]. In this case there is documentary evidence that the appellants had about 500 heads of cattle and oral evidence that some property was destroyed during the eviction. On a reevaluation of the evidence, we find that an award of shs.100, 000, 000/= would reflect the loss incurred in special damages and we so award it.

Aggravated damages are extra compensation to the plaintiff for the injury to his feelings and dignity caused by the manner in which the defendant acted. So before the court awards such damages, the court has to examine the motives and conduct of the defendant aggravating the injury to the plaintiff. The motives and conduct have to be taken into account in assessing compensatory damages. In the case of **Rookes v. Bernard (1964) ALLER 367 at pages 410, 411**, it was held that: "**the fact that the injury to the plaintiff has been aggravated by the malice or by the manner of doing the injury, that is the insolence or arrogance by which it is accompanied, is not a justification for an award of exemplary damages, aggravated damages can do in this type of case what otherwise could be done by exemplary damages**" the fact that the defendants (respondents) arrested the appellants, they left their cattle which were grazing without any keeper including their other

Handwritten initials and signatures in blue ink, including "BR" and a signature.

properties. This act by the defendants created the aggravating circumstances.

Unlike exemplary damages which by their nature are intended to punish the defendant, aggravated damages are by their nature intended to compensate the plaintiff. See also ***Principles governing award of damages in civil cases: a paper presented by Hon. Justice Bart M. Katureeba JSC then at the course of induction of newly appointed judges of High Court Uganda, Entebbe Resort Beach Hotel; Wednesday, 18th June 2008.***

We find it strange that the learned Judge said in her judgment that "***one wonders how pastoralists living a nomadic life can move with such property to a ranch where they intend to stay for a short time while living in temporary structures***".

Being pastoralists, does not deprive them of their Constitutional right, to own such property as listed in the pleadings and mentioned in the evidence. Indeed the learned trial Judge went on to say "***the items are probably meant to be for the plaintiffs' families and workers***". She was depriving them of their Constitutional right, to own property which was also a violation of Article 26(1) of the Constitution.

We also find the learned Judge's conclusion to the effect that "***apart from the plaintiffs who were arrested for refusing to leave the ranch, the rest of the people and their cattle were peacefully evicted. No loss of cows or property was proved***". There were no other people referred to in the case apart from the appellants. The appellants are the ones who obtained the movement permit to take the 500 heads of cattle to Apac.

JS
BR

There were no other people referred to in the movement permit. Definitely the learned Judge misdirected herself on the evidence and hence caused a miscarriage of justice.

It was not in dispute that the appellants moved with their 500 heads of cattle. There was overwhelming evidence even by the respondents that the appellants had these cattle in part of the Maruzi Ranch while they lacked permission to graze their cattle there. They were describing them as unknown groups of people with large herds of cattle (testimony of DW1).

However, in the case of ***W. N. Kyambadde versus Mpigi District Administration Supra***, it was held "***even if the defendant had a legitimate right to seize the car, the arrest of the plaintiff was arrogant, oppressive and arbitrary***".

The way DW1 and other District officials handled the affairs of the appellants was a high handed manner. The appellants' actions were highhanded therefore which justifies the award of aggravated damages.

We therefore find that an award of shs. 10, 000, 000/= as aggravated damages for highhandedness, oppressive and arbitrary treatment will do as compensation to the appellants. We so order.

We accordingly enter judgment in favour of the appellants and the appeal is allowed in the following terms:

- 1) Judgment and decree of the Lower Court is set aside
- 2) The appellants awarded special damages of 100,000,000/= in lieu of their 500 heads of cattle which they lost.
- 3) General damages to the tune of 50,000,000/=

JS
BR K.

- 4) Aggravated damages 10,000,000/= for the high handedness, oppressive and arbitrary treatment.
- 5) Interest on No.2 at 20% per annum until payment in full.
- 6) Costs of this Court and the Court below.

So be it done.

Dated at Kampala this 24th day of June 2015

Mwondha

Hon. Lady Justice Faith E. K. Mwondha, JA

Mwondha

Hon. Mr. Justice Richard Buteera, JA

Buteera

Hon. Mr. Justice Geoffrey Kiryabwire, JA